IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	**No. 24408-3-III**
	)	
MATTHEW WARREN BAIRD,	)	
	)	
Appellant,	)	
	)	**Division Three**
and	)	
	)	
LISA ELAINE BJELLAND-BAIRD,	)	
	)	
Respondent.	)	**UNPUBLISHED OPINION**

KATO, J.—Matthew Baird and Lisa Bjelland-Baird divorced in 2005. Mr. Baird appeals the superior court's provisions for maintenance, child support, and the final parenting plan. We affirm.

Mr. Baird and Ms. Bjelland-Baird were married on September 6, 1992. They had two daughters together, Madison and Josephine. They separated on April 23, 2003. A dissolution was granted on July 25, 2005.

Prior to the marriage, Mr. Baird attended a maritime academy and earned a bachelor's degree in marine engineering technology. Ms. Bjelland-Baird attended Walla Walla College and earned a bachelor's degree in 1987. She

obtained her master's degree in social work in 1989.

Mr. Baird holds a chief engineer license with the United States Coast Guard and is employed as a chief engineer on a large fishing vessel operating out of the Bering Sea. Mr. Baird's base salary is $120,304 per year, plus benefits and bonuses. His income for 2004 was approximately $142,375.

Ms. Bjelland-Baird worked as a licensed social worker for the Children's Home Society of Washington until 2000. Between 2001 and 2003, Ms. Bjelland-Baird worked on a contract basis as a therapist with Programs for Peaceful Living, a Klickitat County domestic violence resource organization. In 2003, she was hired as director of the organization. Her base salary was $36,118, plus benefits.

The court heard testimony on December 29, 2004, and January 4, 2005. Ms. Bjelland-Baird requested an award of maintenance. She testified that maintenance of at least $800 per month would allow her to attend graduate school and obtain a Ph.D. Based on her research, she could earn between $50,000 and $80,000 per year with a Ph.D. and be employed as a professor, researcher, or have a private therapy practice. Ms. Bjelland-Baird said she hoped to become employed as a professor.

The court awarded Ms. Bjelland-

Baird maintenance of $835 per month for four years, provided that she began graduate level coursework and continued to pursue her Ph.D. in social work or a related field. The court stated that maintenance would cease after a period of four years, even if Ms. Bjelland-Baird had not completed her Ph.D. program.

The court granted primary residential custody of Madison and Josephine to Ms. Bjelland-Baird and granted Mr. Baird restricted visitation rights. The parenting plan required Mr. Baird's visitation with the children to be supervised for 12 months. The court found the basis for these restrictions to be Mr. Baird's long-time impairment resulting from alcohol abuse. At the end of 12 months, the plan provided that Mr. Baird could transition to unsupervised parenting time with the children conditioned upon (1) the submission of a report from a doctor discussing "salient parenting issues," and (2) proof of Mr. Baird's sobriety for 12 months. Clerk's Papers (CP) at 29-30.

In calculating child support, the court determined Mr. Baird's monthly net income was $7,486 and Ms. Bjelland-Baird's monthly net income was $2,774. The court awarded Ms. Bjelland-Baird child support of $1,840 per month for the two children. The court explained it set the award in excess of the statutory amount in order:

[T]o provide additional support

> commensurate with the parties' income, resources and standard of living in light of the totality of the parties' financial circumstances. During the marriage, mother and father enjoyed a lifestyle while not lavish, it was comfortable and included the benefits of home ownership, modest savings and foreign travel.

CP at 45. The court also ordered Mr. Baird to pay 73 percent and Ms. Bjelland-Baird to pay 27 percent of the children's special expenses, day care, and educational expenses. Mr. Baird appeals.

He contends the court abused its discretion in awarding maintenance to Ms. Bjelland-Baird. We review an award of maintenance for an abuse of discretion. *In re Marriage of Zahm*, 138 Wn.2d 213, 226-27, 978 P.2d 498 (1999). RCW 26.09.090 outlines the factors the trial court must consider in awarding maintenance. Those factors are the financial resources of each party; the age, physical, emotional condition and financial obligations of the spouse seeking maintenance; the couple's standard of living during the marriage; the duration of the marriage; and the time needed by the spouse seeking maintenance to acquire education necessary to obtain employment. *In re Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). "The only limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors, the award must be just." *Id*. An award that does not evidence a fair consideration of the

statutory factors constitutes an abuse of discretion. *In re Marriage of Mathews*, 70 Wn. App. 116, 123, 853 P.2d 462, *review denied*, 122 Wn.2d 1021 (1993).

Mr. Baird argues the court erred by not considering all the factors listed in RCW 26.09.090. The court is not required to enter a specific factual finding on each of the statutory factors; rather it must only consider the listed factors. RCW 26.09.090(1). "Ideally, trial courts will enter findings of fact on each factor." *In re Marriage of Horner*, 151 Wn.2d 884, 895, 93 P.3d 124 (2004). A court does not err by failing to enter such findings if substantial evidence was presented on each factor and the court's oral opinion and written findings reflect it considered each. *Id*. at 896.

Although the court here did not go through each statutory factor individually in reaching its conclusion to grant maintenance, its memorandum opinion and findings show it considered the relevant factors. Both the memorandum opinion and findings as a whole reflect the court considered the income and financial obligation of both parties; the standard of living during the marriage; the duration of the marriage; and the time needed for Ms. Bjelland-Baird to acquire her education. The maintenance award was appropriate. The court did not abuse its discretion.

Mr. Baird next contends the court

abused its discretion by failing to make sufficient findings to support the child support award. We review the trial court's child support order for abuse of discretion. *In re Marriage of Fiorito*, 112 Wn. App. 657, 663-64, 50 P.3d 298 (2002). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds, including an erroneous interpretation of the law. *Id*.

The court's entry of general, rather than specific findings does not automatically require vacation of the trial court's order if evidence in the record supports it. *In re Marriage of Griffin*, 114 Wn.2d 772, 777, 791 P.2d 519 (1990); *see also In re Marriage of Crosetto*, 82 Wn. App. 545, 560, 918 P.2d 954 (1996).

The legislature created the child support schedule "to ensure that every child support award satisfies the child's basic needs and provides additional financial support commensurate with the parents' income, resources, and standard of living" in a manner that will "equitably apportion the child support obligation between both parents." *In re Marriage of Clarke*, 112 Wn. App 370, 377-78, 48 P.3d 1032 (2002). In setting child support, a trial court first determines the "couple's combined net incomes." *In re Paternity of Hewitt*, 98 Wn. App. 85, 88, 988 P.2d 496 (1999), *review denied*, 141 Wn.2d 1007 (2000). "The court uses that figure to calculate the basic child support obligation, according to the child support economic

table set forth in RCW 26.19.020." *Id*. The trial court then allocates the basic support obligation between the parents "based on each parent's share of the combined monthly net income." RCW 26.19.080(1). This is considered the standard calculation. RCW 26.19.011(8).

RCW 26.19.065 provides standards for the upper limits of child support ordered by the court:

> (1) **Limit at forty-five percent of a parent's net income.** Neither parent's total child support obligation may exceed forty-five percent of net income except for good cause shown. Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.
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> . . . .
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> (3) **Income above five thousand and seven thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact.

Where the parents' income greatly

exceeds the economic table, the trial court has considerable discretion when it comes to setting child support. *In re Marriage of Sievers*, 78 Wn. App. 287, 308, 897 P.2d 388 (1995).

The court found Mr. Baird's monthly net income was $7,486. The court found Ms. Bjelland-Baird's monthly net income as $2,744 per month. The parents' combined monthly net income was $10,260. The court deviated from the standard calculation of $767 per child and ordered Mr. Baird to pay $920 per child for a combined child support amount of $1,840 per month. The court made the following written findings to support the award:

> The parents' combined monthly net income exceeds $7,000 and the court sets child support in excess of the advisory amount because of the lifestyle established during the marriage, the relative incomes of the parties and the parties' expectations regarding parenting.
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> . . . .
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> The child support amount ordered . . . deviates from the standard calculation for the following reasons:
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> Other: The parties' combined net monthly income exceeds the $7,000 per month maximum included in the Washington State Child Support Schedule Economic Table. The court exceeds the advisory amount contained in the economic table in order to provide additional support commensurate with the parties' income, resources and standard of living in light of the totality of the parties' financial circumstances. During the marriage, mother and father enjoyed a lifestyle while not lavish, it was comfortable and included the benefits of home ownership, modest savings and foreign travel.

CP at 43-45.

Mr. Baird relies on *In re Marriage of Daubert*, 124 Wn. App. 483, 99 P.3d 401 (2004), and *In re Marriage of Rusch*, 124 Wn. App. 226, 98 P.3d 1216 (2004), to support his contention that the court's cursory findings are insufficient to support the child support award. Both cases were decided by Division One of this Court. According to *Daubert*, *(*1) the court's findings must specifically explain "why the amount of support ordered is both necessary and reasonable"; (2) the court's determination of necessity for extrapolated child support should include factors such as "the special medical, educational and financial needs of the children"; (3) the factors relevant to the court's determination of the reasonableness of child support include, but are not limited to, the parents' "income, resources [and] standard of living"; and (4) "[t]he mere ability of either or both of the parents to pay more, whether based on consideration of income, resources or standard of living, is not enough to justify ordering more support." *Daubert*, 124 Wn. App. at 495-96, 498.

But we are not bound by the strictures of *Daubert*. The trial court has the discretion to set child support based on the overall financial circumstances and resources of the parties, their standard of living during the marriage, and the special needs of the children. The court

may also exceed the advisory amounts when the combined income of the parties is over $7,000 and the award does not amount to more than 45 percent of the paying parent's net income. RCW 26.19.065(1); *Clarke*, 112 Wn. App. at 379. Here, the court's findings reflect that it based the child support award consistent with the parties' income, resources, and standard of living as a whole. These findings were sufficient to support the child support award. The court did not abuse its discretion.

Mr. Baird next challenges the provisions for the children's special child rearing expenses. In the child support order, the court ordered Mr. Baird to pay 73 percent and Ms. Bjelland-Baird to pay 27 percent of the children's special expenses, day care, and educational expenses. The court stated:

> Father shall pay to mother his proportional share of the children's daycare expenses, educational expenses including tuition, extracurricular fees, books, etc., special expenses including violin, piano, ballet, camp, acting classes, sports fees, etc. as follows:
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> Mother shall itemize such expenses and shall provide the same to father as she incurs them or may accumulate the same for a period of no more than ninety days, as she prefers. Father shall remit his share of the foregoing expenses within thirty days of receipt. Father's failure to timely remit, or to unreasonably quarrel about said bills shall result in a finding of contempt, payment of costs and attorney's fees. If father does not agree with mother's calculations, father shall pay the bill anyway, communicate with mother his misgivings, and if the matter is not settled thereby, father may take the matter to dispute resolution. This provision will be examined by the court for

> adherence to principles of good faith and reasonableness, in the context of parental responsibilities and the court's understanding of the parties' respective incomes.

CP at 48. Mr. Baird argues this provision essentially granted Ms. Bjelland-Baird a "blank check" for extraordinary and special expenses because the court failed to determine the reasonableness and necessity for the expenses.

RCW 26.19.080 provides in part:

> (1) The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income.
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> . . . .
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> (3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. . . .
>
> (4) The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation.

We interpret "necessary and reasonable expenses" in a manner that serves the best interests of the child. *In re Marriage of Mattson*, 95 Wn. App. 592, 600, 976 P.2d 157 (1999).

The court here provided a mechanism in the order allowing for the resolution of disputes between the parties regarding any special expenses. The court also stated that the provision

would be examined for adherence to principles of good faith and reasonableness.

Moreover, at entry of the final orders, the court stated:

> My view is that, one, there was no evidence at trial that the mother indulges in gratuitous decision making with respect to these children. That is one of the reasons I fashioned my language the way I did. It seemed to me that her decision making was appropriate and not indulgent in that way.
>
> Also, secondly, there's a self-correcting mechanism in this rule, and that is that, given the current income of the parties, her 25 or 27 percent is arguably just as painful to her as it is to him paying 73 percent, given their disparate incomes. So she will not be making these decisions in a frivolous way as a result of that. She's going to have to pay a quarter of everything that occurs. And I think that's sufficient.
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> So 3.15 stands.

Report of Proceedings (July 25, 2005) at 310.

There was nothing unreasonable about the court's provision. The court did not abuse its discretion.

Mr. Baird also contends the court abused its discretion by imposing restrictions in the parenting plan. He argues there was insufficient evidence in the record to support these restrictions.

We review a parenting plan for an abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). A "court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *Id*. at

46-47.

RCW 26.09.191 governs limitations and restrictions in parenting plans. The statute allows a court to limit any provision of the parenting plan based on potentially adverse effects on the child's best interests when there is "[a] long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions." RCW 26.09.191(3)(c).

At trial, Mr. Baird's mother, Ruth Miaonchi, testified about his history of alcohol abuse. Ms. Miaonchi is a licensed clinical social worker. She said her son had a longstanding problem with alcohol, beginning from the time he was 11 or 12 years old. She was convinced that he had a serious drinking problem and she had talked with him about it on several occasions. She felt Mr. Baird did not have a very good understanding about the children's developmental needs or what was appropriate in terms of discipline. She noticed him get very upset and angry with the children during a supervised visit. Ms. Miaonchi said that during one visit, he drank in the presence of the children. She also had some concerns about the safety of the children if parenting time was unsupervised. Ms. Miaonchi testified Mr. Baird had a hot temper, which was frightening to the children. She said that if Mr. Baird successfully completed a treatment program and had a period of sobriety, her feelings about

unsupervised visitation would change. Mr. Baird himself admitted at trial that he believed he had a problem with alcohol.

Ms. Bjelland-Baird then testified about Mr. Baird's issues with alcohol. She said that at one point during the marriage, Mr. Baird would drink every night until he passed out. Ms. Bjelland-Baird said she was concerned for the safety of her children, based on her experiences with Mr. Baird while he was consuming alcohol.

The court also considered an evaluation submitted by Charlene Sabin, M.D. Mr. Baird and Ms. Bjelland-Baird both agreed to participate in the evaluation. Dr. Sabin stated that Mr. Baird was capable of caring for the children's physical care, but had difficulty having an emphatic relationship with them and understanding appropriate parenting communication. Dr. Sabin stated she was aware of Mr. Baird's difficulty with alcohol and he had made some unfortunate choices about the use of alcohol, indicating that alcohol had an inappropriate priority in his life. She said the alcohol assessment indicated Mr. Baird was in need of treatment for alcoholism. Dr. Sabin stated that due to the uncertainty about the course of Mr. Baird's recovery and the tension between him and the children, she recommended that the parenting time be supervised until a future date when his progress could be

reassessed.

The evidence of Mr. Baird's alcohol abuse was sufficient to sustain the restrictions placed on him in the parenting plan. The court did not abuse its discretion.

Ms. Bjelland-Baird requests attorney fees on appeal. Under RCW 26.09.140, this court has discretion to order a party to pay the other party's attorney fees and costs associated with the appeal of a dissolution action. *Griffin*, 114 Wn.2d at 779-80. The arguable merit of the appellate issues and the financial resources of the parties are taken under consideration when exercising discretion. *Id*. at 779. The prevailing party is not the standard. *In re Marriage of Rideout*, 150 Wn.2d 337, 357, 77 P.3d 1174 (2003).

A party requesting fees under RCW 26.09.140 must comply with RAP 18.1. RAP 18.1(a). This requires a party in her opening brief to "devote a section . . . to the request for the fees or expenses" and if financial need is a statutory factor in awarding fees, she must also file a financial affidavit. RAP 18.1(b), (c); RCW 26.09.140. The affidavit must be filed no later than 10 days before the case is heard. RAP 18.1(c).

Ms. Bjelland-Baird has complied with the RAP 18.1 requirements by devoting a section of her brief to the

fee request and timely submitting her affidavit of financial need. Her financial declaration establishes that her monthly net income is $3,102. Her monthly expenses, including tuition for her graduate education, are $7,736. Mr. Baird has neither claimed he is unable to pay nor has he challenged her description of her current financial situation.[1] Ms. Bjelland-Baird's request for attorney fees is granted in an amount to be determined by our commissioner under RAP 18.1(f).

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kato, J.

WE CONCUR:

_____
Brown, J.

_____
Kulik, J.

[1] Mr. Baird filed an untimely financial declaration with this Court. RAP 18.1(c). Therefore, we need not consider his financial resources in deciding Ms. Bjelland-Baird's request for fees on appeal.